

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD J. NICHOLAS,

Plaintiff,

v.

ARTHUR DILS, Esq.,

Defendant.

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CIVIL NO. 3:CV-07-0225

(Judge Caputo)

M E M O R A N D U M

I. Background.

Plaintiff, Edward J. Nicholas, an inmate at the State Correctional Institution in Albion, Pennsylvania, commenced this action by filing a *pro se* Civil Rights Complaint under the provisions of 42 U.S.C. § 1983. Plaintiff also filed a Motion for Leave to Proceed *in forma pauperis* (Doc. 2). The instant Complaint is among a string of civil actions by Plaintiff challenging alleged improprieties in his criminal proceedings in the Dauphin County, Pennsylvania, Court of Common Pleas, criminal docket # 3685 of 1997 (“3685 cd 97”). Plaintiff alleges ineffective assistance of criminal defense counsel. He seeks “consideration of disbarment [of his criminal defense counsel]” (Doc. 1 at 3), together with injunctive and declaratory relief. For the reasons that follow, the Complaint will be dismissed, without prejudice, pursuant to 28 U.S.C. § 1915(g), and the Motion to Proceed *in forma pauperis* will be denied.

II. Discussion.

Under the provisions of 28 U.S.C. § 1915(g), a federal civil action by a prisoner proceeding *in forma pauperis* is barred if he or she has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United

States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

Last year, Plaintiff filed three (3) civil rights actions which were dismissed by this Court on ground that they were frivolous. See *Nicholas v. Evans*, Civil No. 4:06-CV-1414 (M.D. Pa. Aug. 21, 2006) (Jones, J.); *Nicholas v. Evans*, Civil No. 4:06-CV-1478 (M.D. Pa. Aug. 21, 2006) (Jones, J.); *Nicholas v. Evans*, Civil No. 4:06-CV-1541 (M.D. Pa. Oct. 3, 2006) (Caputo, J.). All of these cases were commenced by Plaintiff while he was incarcerated. Plaintiff's instant allegations relate to claims of impropriety in his preliminary hearing, trial, conviction, and sentence in 3685 cd 97. There is no allegation or indication that this inmate is in danger of imminent serious physical injury. Thus, the above-captioned action is barred, and it will be dismissed under § 1915(g). An appropriate Order follows.

Dated: February 8, 2007.

/s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge

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ORDER

AND NOW, THIS 8th DAY OF FEBRUARY, 2007, in accordance with the foregoing Memorandum, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's Motion for Leave to Proceed *in forma pauperis* (Doc. 2) is **DENIED**.
2. Plaintiff's Complaint (Doc. 1) is **DISMISSED**, without prejudice, pursuant to the provisions of 28 U.S.C. § 1915(g).
3. The Clerk of Court is directed to close this case.
4. Any appeal taken from this Order will be deemed frivolous, without probable cause, and not taken in good faith. See 28 U.S.C. § 1915(a)(3).

/s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge